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December 30, 2005

By Hand

The Honorable Vernon A. Williams
Secretary
U.S. Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings

DEC 30 2005

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Re: NSWMA et al Petition for Declaratory Order, STB Docket No. 34776

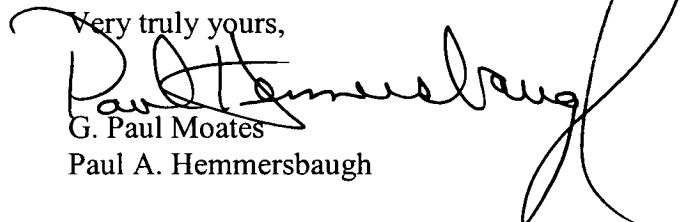
Dear Secretary Williams:

Enclosed for filing in the above-captioned matter are the original and ten copies of a Motion of The New York, Susquehanna, And Western Railway Corporation ("NYS&W") for Leave to File a Response to the Reply of the National Solid Waste Management Association ("NSWMA"), and NYS&W's Response to the Reply of NSWMA, and electronic copies of those two documents.

Please file these documents in STB Docket No. 34776, file-stamp the additional copies and return them to our messenger for service and for our files. If you have any questions regarding this filing, please contact one of the undersigned.

Thank you for your assistance in this matter.

Very truly yours,


G. Paul Moates
Paul A. Hemmersbaugh

cc: Counsel of record

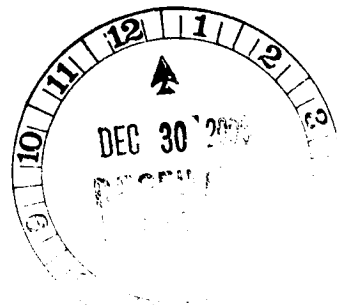
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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34776



**MOTION OF THE NEW YORK, SUSQUEHANNA, AND
WESTERN RAILWAY CORPORATION FOR LEAVE TO FILE RESPONSE**

The New York, Susquehanna and Western Railway Corporation (“NYS&W”) hereby moves the Board for leave to file the attached Response to the Reply of the National Solid Wastes Management Association (“NSWMA”).¹ NSWMA’s Reply mischaracterizes the facts and improperly impugns NYS&W’s motives by, among other things, claiming that NYS&W closed the facility that is the subject of NSWMA’s Petition in order to evade the Board’s review. *See* Response of NSWMA to NYS&W’s Opp. to Pet. and Declaratory Order at 2 (Dec. 22, 2005) (“NSWMA Reply”). Leave to file should be granted to enable NYS&W to respond to these accusations and correct the record.

NSWMA and the other petitioners have asked the Board for a declaratory order that 49 U.S.C. § 10501(b) does not preempt state and local regulation of certain transloading operations conducted at NYS&W’s truck-rail transload facility located at 16th Street, North Bergen Township, Hudson County, New Jersey (the “16th Street Facility”) and at “other similarly situated locations.” NSWMA Pet. 8. On November 14, 2005, NYS&W filed a Reply that detailed two reasons why the Board should decline to institute a declaratory order proceeding: (1) because the 16th Street Facility has been closed and the Petition is moot; and (2) because the

¹ While NSWMA’s Petition for a Declaratory Order was joined by several other entities, NSWMA was the only petitioner to file a Reply.

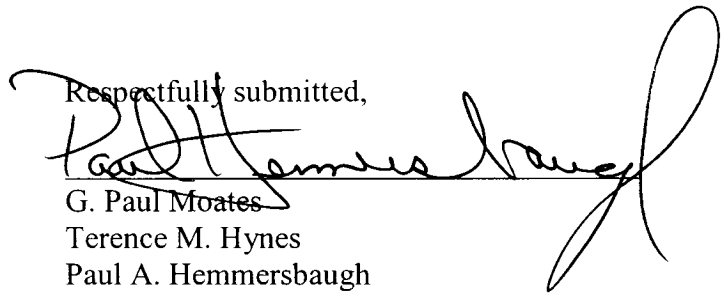
United States District Court for the District of New Jersey² is considering the precise issue that petitioners present, and that Court has not asked for the Board's input. On November 23, 2005, the Board issued a schedule for further comment, with comments due December 13, 2005 and replies to those comments due on December 23, 2005.

On December 22, 2005, the NSWMA filed a Reply that responded to NYS&W's arguments that the Petition was moot and that a declaratory order proceeding was inappropriate while *NYS&W v. Campbell* was pending before the District Court. NSWMA accused NYS&W of closing the 16th Street Facility in a deliberate effort to "manufacture mootness," and claimed that NYS&W shut down the facility only to move its operations to similar nearby facilities. NSWMA Reply at 2, 4. NSWMA further asserted that NYS&W had not informed the Board about its other transload operations, and suggested that NYS&W's representations that the 16th Street Facility was closed were not "reliable." *Id.* at 3, 4. These outrageous mischaracterizations of the record are demonstrably false. The attached reply responds to these accusations and will give the Board an accurate record on which to decide whether to institute the declaratory order proceeding that NSWMA requests.

WHEREFORE, NYS&W respectfully requests that the Board grant it leave to file the attached reply.

² *New York, Susquehanna and Western Railway Corp. v. Campbell* (Civil Action No. 05-4010 (KSH)) ("*NYS&W v. Campbell*").

Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read "Paul A. Hemmersbaugh". The signature is written over the printed name and extends to the right, with a large loop at the end.

G. Paul Moates

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Paul A. Hemmersbaugh

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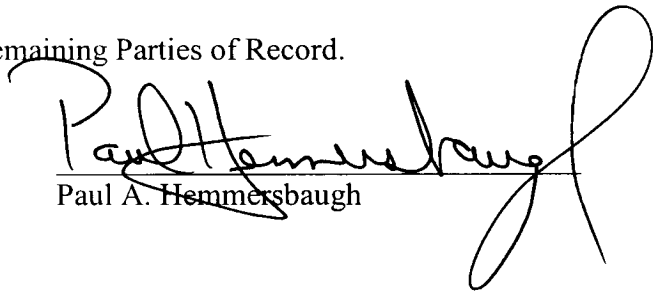
Dated: December 30, 2005

CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of December 2005, I served the foregoing Motion of The New York, Susquehanna, And Western Railway Corporation for Leave to File Response by causing a copy thereof to be delivered by overnight courier to:

Stephen M. Richmond, Esq.
Tina Y. Wu, Esq.
Beveridge & Diamond, P.C.
45 William Street, Suite 120
Wellesley, Massachusetts 02481-4004

and by first class mail, postage prepaid, to the remaining Parties of Record.



Paul A. Hemmersbaugh